Supreme Court U.S.
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No. _____

In The
Supreme Court of the United States

DWIGHT D. YORK,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether the refusal of a trial court to sever disparate counts that are prejudicially intertwined in an indictment is an abridgement of the right to due process of law and a fair trial under the Fifth and Sixth Amendments?

II.

Whether permitting the government to proceed to trial on an indictment returned by a grand jury selected from a judicially recognized tainted jury pool renders the proceedings fundamentally unfair in violation of the Fifth and Sixth Amendments?

III.

Whether a defendant can be sentenced based upon facts not reflected in the jury verdict, in contravention of the right to a jury trial and due process of law under the Fifth and Sixth Amendments?

IV.

Whether use of a newer version of the Federal Sentencing Guidelines rather than that operative at the time of the purported crimes, resulting in more severe penalties, violates the *ex post facto* clause of the Constitution?

PARTIES TO THE PROCEEDINGS

All parties are contained in the caption of the case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Dwight D. York, respectfully prays that a writ of certiorari issue to review the judgment and decision of the United States Court of Appeals for the Eleventh Circuit in this case. He is appealing from the judgment rendered May 7, 2004 in the United States District Court for the Middle District of Georgia, Macon Division, in which he was sentenced to 1,620 months (135 years). Doc. 285. Judgment, May 7, 2004; Doc. 286, Restitution Order ($566,066.00), May 7, 2004. Following motions for new trial, he unsuccessfully appealed. Doc. 289, Notice of Appeal, May 7, 2004; *United States v. York*, 428 F.3d 1325 (2005), *re'hrg en banc denied*, 167 Fed.Appx. 169 (Table) (2005).

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Eleventh Circuit is reported at *United States v. York*, 428 F.3d 1325 (2005), *re'hrg en banc denied*, 167 Fed.Appx. 169 (Table) (2005). App. 1, 25. The recusal order of the United States District Court, Middle District of Georgia, Macon Division, is reported at *United States v. York*, 274 F.Supp. 2d 1347 (M.D. Ga. 2003).

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered judgment affirming Petitioner's conviction and 135-year sentence on October 27, 2005. App. 1. A petition for rehearing was denied December 21, 2005. App. 25. The present petition is timely filed within the 60-day extension of time granted by Justice Thomas.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review on a writ of certiorari the judgment of a federal court of appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment Five:

> No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

United States Constitution, Amendment Six:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, article I, section 10, clause 1:

> No State shall . . . pass any . . . ex post facto Law.

Rule 8(a), Federal Rules of Criminal Procedure:

> The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged . . . are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

Rule 14, Federal Rules of Criminal Procedure:

> (a) Relief. If the joinder of offenses . . . in an indictment, an information, or a consolidation for

trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

STATEMENT OF CASE

The 60-year old African-American Petitioner, leader of a religious organization, was sentenced to 135-year imprisonment. Doc. 285, Judgment, May 7, 2004. He was initially charged in the Middle District of Georgia with four counts of the interstate transportation of minors for unlawful sexual activity in violation of 18 U.S.C. § 2423(a), and entered pleas of not guilty. Doc. 1, Indictment, May 2, 2002; Doc. 5, Arraignment, May 9, 2002.

The parties agreed to a settlement that called for a stipulated term of 15-year imprisonment, and the forfeiture of property and currency. Doc. 78-86, Superseding Information (3 counts), Waiver of Indictment, Plea Agreement, Plea, Minute sheet on guilty plea, Findings of Fact on Guilty Plea, Preliminary Order of Forfeiture, Agreement Between Government and Defendant as to Waiver of Rights, Jan. 23, 2003. However, the judge rejected the agreement and stating that "a sentence of 20 years might be acceptable." *United States v. York*, 274 F.Supp. 2d 1347-48 (M.D. Ga. 2003); Doc. 107, Order, June 25, 2003. The judge was then removed from the case due to having become improperly involved in plea negotiations. *United States v. York*, 274 F.Supp. 2d at 1351.

A change of venue was granted due to extensive prejudicial publicity, transferring the case from the Macon Division, Middle District of Georgia, to the Brunswick